

FRANCISCO I. CHAVEZ, PETITIONER, VS. IMELDA R. MARCOS, RESPONDENT.*G.R. No. 185484. June 27, 2018*

Ponente: LEONEN, J.

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This Court will not require a judge to inhibit himself in the absence of clear and convincing evidence to overcome the presumption that he will dispense justice in accordance with law and evidence.[1] This Court will also not allow itself to become an instrument to paper over fatal errors done by the petitioner and the prosecution in the lower court.

This is a Petition for Review on Certiorari,[2] assailing the Court of Appeals February 28, 2008 Decision[3] and November 24, 2008 Resolution[4] in CA-G.R. SP No. 98799, dismissing Francisco I. Chavez's (Chavez) Petition for Certiorari[5] and affirming the Regional Trial Court order, which denied the prosecution's motion for inhibition.[6]

This case involves 33 consolidated criminal cases, namely, Criminal Case Nos. 91-101732-39, 91-101879-83, 91-101884-92, and 92-101959-69,[7] filed against Imelda R. Marcos (Imelda), among others, for violations of Section 4 of Central Bank Circular No. 960,[8] in relation to Section 34 of Republic Act No. 265,[9] or the Central Bank Act.[10]

The Information in Criminal Case No. 91-101732 read, in part:

That from 1973 up to December 26, 1985, both dates inclusive, and for sometime thereafter, the above-named accused, in conspiracy with her late husband, then President Ferdinand E. Marcos, while both residing in Malacanang Palace in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, did then and there wilfully, unlawfully and feloniously open and maintain foreign exchange accounts abroad, particularly in Banque de Paris et des Pays-Bas (also known as Banque Paribas) in Geneva, Switzerland, later transferred to another bank known as LOMBARD, ODIER ET CIE also in Geneva, in the names of several establishments organized by their dummy or attorney-in-fact identified as Stephane A. Cattai, among which were accounts 036-517 J, Establishment BULLSEYE; 037-973 R, Establishment MABARI; 038-150 L, Establishment GLADIATOR; 038-489Z, Establishment VOLUBILIS, 32.529 X, INTERNATIONAL INTELLIGENCE FUND; PRETORIEN created under the name INTELLIGENCE; Establishment GARDENIA; Establishment GLADIATOR; Establishment CESAR; Establishment ESG; account numbers 23-0734H, 22-98SC, 23-285; 3652IN; and 073 043 P in the name of accused who executed a power of attorney in favour of her husband on September 29, 1980 giving the latter the authority to do anything with respect to her accounts; which accounts were reduced to five, namely; 036 517 J; 037-973 R; 038 150 L; 038 489 Z, and 036 521 N which were later on transferred to LOMBARD, ODIER ET CIE for credit to the account COGES 00777 per instruction on May 17, 1984 of the accused's husband and attorney-in-fact to their dummy and duly appointed administrator Stephane Cattai who also transferred to said Lombard Odier et Cie in order to continue managing for them their hidden accounts, including the investment of \$15-million in Philippine-issued dollar-denominated treasury notes which was fully paid together with the interests on December 26,

1985 and which payment was remitted to LOMBARD, ODIER ET CIE for the credit of Account COGES 00777 of the accused and her late husband, which act of maintaining said foreign exchange accounts abroad was not permitted under the Central Bank regulations.

CONTRARY TO LAW.[11]

The informations for Criminal Case Nos. 91-101733-39 read similarly, except for the dates of the offense, the name/s of the dummy/ies used, the amounts maintained in the foreign exchange accounts, and the names of the foreign banks where the accounts were allegedly held by the accused.[12]

The Information in Criminal Case No. 91-101888 read, in part:

That from September 1, 1983 up to 1987, both dates inclusive, and for sometime thereafter, both accused, conspiring and confederating with each other and with the late President Ferdinand E. Marcos, all residents of Manila, Philippines, and within the jurisdiction of this Honorable Court, did then and there wilfully, unlawfully and feloniously fail to submit reports in the prescribed form and/or register with the Foreign Exchange Department of the Central Bank within 90 days from October 21, 1983 as required of them being residents habitually/customarily earning, acquiring or receiving foreign exchange from whatever source or from invisibles locally or from abroad, despite the fact they actually earned interests regularly every six (6) months for the first two years and then quarterly thereafter for their investment of \$50-million, later reduced to \$25-million in December 1985, in Philippine-issued dollar denominated treasury notes with floating rates and in bearer form, in the name of Bank Hofmann, AG, Zurich, Switzerland, for the benefit of Avertina Foundation, their front organization established for economic advancement purposes with secret foreign exchange account Category (Rubric) C.A.R. No. 211 925-02 in Swiss Credit Bank (also known as SKA) in Zurich, Switzerland, which earned, acquired or received for the accused Imelda Romualdez Marcos and her late husband an interest of \$2,267,892 as of December 16, 1985 which was remitted to Bank Hofmann, AG, through Citibank, New York, United States of America, for the credit of said Avertina account on December 19, 1985, aside from the redemption of \$25 million (one-half of the original \$50-M) as of December 16, 1985 and outwardly remitted from the Philippines in the amounts of \$7,495,297.49 and \$17,489,062.50 on December 18, 1985 for further investment outside the Philippines without first complying with the Central Bank reporting/registering requirements.

CONTRARY TO LAW.[13]

The Information in Criminal Case No. 91-1 01879 read, in part:

That from September 21, 1983 up to December 26, 1985, both dates inclusive, and for sometime thereafter, all accused, conspiring and confederating with one another and with the late President Ferdinand E. Marcos, all residing and/or doing business in Manila, Philippines, and within the jurisdiction of this Honorable Court, and assisted by their foreign agent or attorney-in-fact Stephane G. Cattai, did then and there wilfully, unlawfully and feloniously fail to submit reports in the prescribed form and/or register with the Foreign Exchange Department of the Central Bank within 90 days from October 21, 1983 as required of them being residents habitually/customarily earning, acquiring/receiving foreign exchange from whatever source or from invisibles locally or from abroad, despite the fact that they actually earned interests regularly for their investment of FIFTEEN MILLION (\$15-million) DOLLARS, U.S. currency, in Philippine-issued dollar-denominated treasury notes with floating rates and in bearer form, in the name of Banque de Paris et des Pays-Bas (also known as Banque Paribas) in Geneva, Switzerland but which was transferred on May 17, 1984 to Lombard, Odier et Cie, a bank also in Geneva, for the account of COGES 00777 being managed by Mr. Stephane Cattai for the Marcoses who also arranged the said investment of \$15-million through respondents Roberto S. Benedicto and Hector T. Rivera by using the Royal Traders Bank in Manila as the custodian of the said dollar-denominated treasury notes, which earned, acquired or received for the accused Imelda Romualdez Marcos and her late husband an interest of \$876,875.00 as of June 15, 1984 which was remitted to Banque

Paribas through Chemical Bank in New York, United States of America, for the Credit of said Account COGES 00777 of the Marcoses for further investment outside the Philippines without first complying with the reporting/registering requirements of the Central Bank.

CONTRARY TO LAW.[14]

The other charges in the other informations read substantially the same, save for the dates of the offense, the name/s of the dummy/ies used, the amounts maintained in the foreign exchange accounts, and the names of the foreign banks where the accounts were allegedly held by the accused.[15]

The prosecution's version of facts leading to the filing of the informations was summarized as follows:

In September 1983, the Central Bank of the Philippines issued dollar-denominated treasury notes (dollar t-notes for brevity) in the total amount of \$125-million, U.S. currency. \$75-million of these notes were purchased by three Swiss banks holding the hidden wealth of then President Ferdinand E. Marcos and his wife Imelda Romualdez Marcos (the Marcoses, for brevity). The purchases were recorded in the Central Bank under the name of the Marcoses' front man, then Ambassador Roberto S. Benedicto.

Of this \$75-million, \$50-million came from Bank Hofmann, \$10-million from the Swiss Bank Corporation (SBC), and \$15-million from Banque Paribas. The purchases by Bank Hofmann and SBC were made through accounts owned by foundations called Avertina, Maler I, and Maler II, which were owned by the Marcoses, and which act of opening and maintaining foreign exchange accounts abroad without CB authorization is a violation of Sec. 4 of the CB's Foreign Exchange Restrictions as consolidated in 1983 in CB Circular No. 960.

The purchase by Banque Paribas (later transferred to Lombard, Odier et Cie) was arranged by the Marcoses' attorney-in-fact Stephane Cattai through Traders Royal Bank (TRB) which acted as custodian of the securities. The contact person at TRB was Hector T. Rivera, vice- president of the bank's Trust Department.

Avertina's \$50-million investment earned an interest of \$13,623,540.77 from 1983 to 1986; Maler I and Maler II's \$10-million investment earned \$3,369,479.18 in interest from 1984 to 1987; and Banque Paribas/Lombard Odier et Cie's \$15-million investment earned \$3,579,479.16 from 1984 to 1985.

Total interest earned by the Marcoses out of the dollar t-notes amounted to \$20,572,499.11 from 1984 to 1987. All of these interest [illegible] department in violation of Sec. 10 of CB Circular No. 960.

The transactions came to light only after the so-called EDSA People Power Revolution in February 1986 when documents relating to the Marcoses' Swiss bank accounts and dollar t-note purchases were found in Malacanang Palace after the Marcos family had fled.

The Malacanang documents revealed that the Marcoses maintained a number of Swiss bank accounts, among them:

A. In Banque de Paris et des Pays-Bas (also known as Banque Paribas) in Geneva, Switzerland, later transferred to another bank known as LOMBARD, ODIER ET CIE also in Geneva, in the names of several establishments organized by the Marcoses' attorney-in-fact identified as Stephane A. Cattai -

- Account 036-517 J, Establishment BULLSEYE;
- Account 037-973 R, Establishment MABARI;
- Account 038-[illegible], Establishment GLADIATOR;
- Account 038-489 Z, Establishment VOLUBILIS;
- Account 32.529 X, INTERNATIONAL INTELLIGENCE FUND;

- Account PRETORIEN created under the name INTELLIGENCE;
- Establishment GARDENIA;
- Establishment GLADIATOR;
- Establishment CESAR;
- Establishment ESG;
- Accounts 23-0734H, 22-98SC, 23-285; 3652IN; and 073 043 P in the name of Mrs. Marcos who executed a power of attorney in favour of her husband on September 29, 1980 giving the latter the authority to do anything with respect to her accounts, which accounts were reduced to five, namely; 036 517 J; 037-973 R; 038 150 L; 038 489 Z, and 036 521 N which were later on transferred to LOMBARD, ODIER ET CIE for credit to the account COGES 00777;

B. In Swiss Credit Bank (also known as SKA) in Switzerland in the names of foundations which were organized successively or one after the other by the Marcoses' nominees, fronts, agents or duly appointed administrators -

- Charis Foundation which was succeeded by Azio Foundation on June 11, 1971, renamed Verso Foundation on August 29, 1978, which was dissolved on June 25, 1981 and the funds transferred to Fides Trust Company in Bank Hofmann, which transferred the same to Vibur Foundation under the account "Reference OSER" on September 10, 1981;
- Trinidad Foundation, succeeded by Rayby Foundation on June 22, 1973, which was dissolved on March 10, 1981 and whose funds were transferred to Bank Hofmann in favor of Fides Trust Company under account "Reference DIDO" which organized Palmy Foundation;
- Xandy Foundation, which was renamed Wintrop Foundation on August 29, 1978, whose assets and/or funds were transferred on May 10, 1981 to Fides Trust Company under the account "Reference OMAL" in Bank Hofmann, which effected the transfer of said assets and/or funds to Avertina Foundation;
- Charis Foundation, which was renamed Scolari Foundation on December 13, 1974 and then renamed Valamo Foundation on August 29, 1978, which was dissolved on June 25, 1981 and its assets and/or funds transferred to Fides Trust Company under the account "Reference OMAL" in Bank Hofmann, which effected the transfer of said assets and/or funds to Spinus Foundation which opened an account with SKA on September 10, 1981, but which also transferred the funds to Avertina Foundation;

C. In Swiss Bank Corporation (SBC) in Geneva, Switzerland: Establishment, later transformed into Maler Foundation, which was organized by the Marcoses' nominees, fronts, agents or duly appointed administrators, among them Jean Louis Sunier -

- Maler I;
- Account No. 98929 NY under Maler II;
- Rosalys Foundation, which was dissolved on December 19, 1985, and its assets and/or funds transferred to Aguamina Corporation's (Panama) Account No. 53300 with SBC.

The newly-installed government of President Corazon Aquino represented by then Solicitor General Sedfrey Ordonez lost no time in filing an application with the Swiss authorities for mutual assistance in the matter of the Marcos dollar deposits in Switzerland.

The request for assistance was eventually granted by Swiss investigating magistrate Peter Cosenday. Cosenday issued a freeze order on all the Swiss banks where the Marcoses and their foundations had accounts, and he

further required these banks and the foundations to submit relevant documents and information concerning the accounts.

The Marcoses and the foundations appealed Cosenday's decision. The result of the appeals was that on December 21, 1990, the Federal Supreme Court of Switzerland rendered twin decisions sustaining the position of the Philippine government and giving it a one-year deadline to file the appropriate cases against the Marcoses and their cronies, otherwise the freeze order covering the Marcos bank accounts in Switzerland would be lifted.

The Presidential Commission on Good Government (PCGG) thereupon decided to request the Solicitor General (now Francisco Chavez) to file the appropriate cases against the estate of the late President Marcos, Mrs. Marcos, and other members of their family based on documents already turned over and still to be turned over by the Swiss authorities.[16]

During the trial, the prosecution presented only two (2) witnesses. Its first witness was former Assistant Solicitor General and Presidential Commission on Good Government Commissioner Caesario Del Rosario (Del Rosario). He identified Swiss bank documents and testified that they were personally received by petitioner Chavez before they were referred to him for study, evaluation, and determination of probative value. He also identified several documents signed by the late President Ferdinand Marcos and respondent Imelda. He averred that he assisted in drafting the complaints connected to the recovery of the Marcos' properties.[17]

As its second witness, the prosecution presented petitioner Chavez. He was presented as an expert witness in the field of law, and he corroborated Del Rosario's testimony. He testified on the formation of the task force, of which Del Rosario was a member and which prepared the criminal complaints against the Marcoses and their cronies.[18] However, petitioner's presentation as a witness was hampered by a series of scheduling issues, which resulted in several postponements and absences. Chavez's claim of bias was based largely on his perception of how Regional Trial Court Presiding Judge Silvino T. Pampilo, Jr. (Judge Pampilo) scheduled his testimony, combined with what transpired when he failed to testify on April 24, 2007. Thus, the relevant facts from the record shall be set forth in detail.

On the matter of scheduling, the Regional Trial issued its January 10, 2007 Order, requiring Chavez to appear in court on January 16, 17, 23, 24, 30, 31, and February 6, 7, 13, 14, 20, 21, 27, and 28, 2007 to testify. This Order stated further that the hearings were "intransferrable in character." [19] In his January 11, 2007 letter, Chavez advised the Regional Trial Court that his entire calendar for January and the beginning of February 2007 were full, and requested later dates for his testimony, including February 20, 21, 27, and 28.[20] The Regional Trial Court reconsidered its January 10, 2007 Order and reset Chavez's examination to February 21, 27, and 28, again with the warning that these trial dates were not transferable.[21] On March 6, 2007, a day that was set for the continuation of the direct examination of Chavez, the prosecution moved that the March 6 and 7 hearings be moved on the ground that Chavez was unavailable, for he would be attending to his detained clients in Camp Capinpin, Tanay, Rizal.[22] The Regional Trial Court granted this as well with the following warning:

[I]f the former Solicitor General failed to testify on the next scheduled hearing, all his testimonies will be stricken off the record and the prosecution be directed to formally offer its exhibits.[23]

On March 20, 2007, Prosecutor George H. Yarte, Jr. (Prosecutor Yarte) filed a Motion to Cancel Hearing of April 11, 2007, on the ground that he would be attending the National Prosecutors League of the Philippines' Annual Convention in Boracay Island from April 11 to 13. Thereafter, in a letter dated March 21, 2007, Chavez asked to be excused from attending the April 10, 2007 hearing due to an intransferrable Court Martial setting in Camp Capinpin, Tanay, Rizal,[24] but advised the Regional Trial Court that he would be available to testify on the April 11 and 24, 2007 hearings.[25] Judge Pampilo denied Chavez's request in a letter dated March 22, 2007 and the

prosecution's Motion to Cancel the April 11, 2007 hearing.[26] Thereafter, Chavez pleaded that Judge Pampilo reconsider the denial and made a commitment that he would no longer request for further postponements.[27]

Thus, Chavez did not attend the April 10, 2007 hearing. He attended the succeeding hearing on April 11, 2007. However, he was unable to testify as the documents he was supposed to identify were with Prosecutor Yarte, who was attending the prosecutors' annual convention in Boracay.[28]

Subsequently, Chavez was scheduled to continue his direct testimony on April 24, 2007. However, the prosecution filed a Motion to Inhibit,[29] seeking Judge Pampilo's inhibition, and set it to be heard on April 24, 2007.[30] Reacting to the Motion to Inhibit, Chavez explained in a letter dated April 23, 2007[31] that he would not appear in court on April 24, 2007:

I would have decided to go to court to continue my direct testimony on April 24, 2007 at 1:00 p.m. were it not for the receipt of this motion to inhibit.

As a witness, I cannot presume that the motion to inhibit, which is set for hearing also on April 24, 2007 at 2:00 p.m., will be outrightly denied by this Honorable Court who would then direct the prosecution to continue with the presentation of its evidence. In line with due process, I proceed along the assumption that at the hearing of the motion to inhibit, Your Honor will give the accused an opportunity to submit their comment thereon, thus necessarily resulting in the cancellation of the April 24, 2007 setting. I say that the cancellation of the April 24, 2007 setting follows as a necessary consequence of the motion to inhibit because such motion raises a question of first priority which must be first resolved by Your Honor before further proceedings are undertaken.

....

In view of the foregoing considerations, I most respectfully submit that my presence at the April 24, 2007 setting would no longer be necessary. I hasten to reaffirm my commitment to continue my direct testimony once the issue of Your Honor's inhibition shall have been resolved with finality.[32] (Emphasis in the original)

Thus, Chavez did not attend the hearing on April 24, 2007 despite being scheduled for direct examination.[33]

Atty. Napoleon Uy Galit (Atty. Galit), a lawyer from the Presidential Commission on Good Government, appeared before the court with a memorandum from then Secretary of Justice Raul Gonzales, authorizing him to prosecute the consolidated cases. As Chavez took issue with Atty. Galit's appearance, this Court shall quote extensively from the transcript of stenographic notes of the trial on April 24, 2007:

Atty. Galit:

Good afternoon, your Honor, Attorney Napoleon Uy Galit for the PCGG. Your Honor, just a brief manifestation before the start of the proceedings. A while ago your Honor, before this Honorable Court convened the proceedings, I showed this memorandum to Prosecutor Yarte dated April 17, 2007 signed by Honorable Secretary Raul Gonzales which your Honor the wordings is quite, probably this letter will state for itself, your Honor, and I am showing this to Prosecutor Yarte and for an eventual filing into the records of this Honorable Court. This Memorandum simply designates this humble representation authorizing, your Honor, to prosecute this case even in the presence or without the presence of any public prosecutor.

Court:

So even without Prosecutor Yarte, you can proceed with the presentation of that memorandum with or without the prosecutor. What can you say prosecutor?

Pros. Yarte:

Well your Honor, I still have to check with the office. As of now, I cannot confirm or deny the truthfulness or the authenticity of this memorandum.

Court:

You mean to say you are not familiar with the signature of your boss?

Pros. Yarte:

I am familiar with the signature of my boss, your Honor, but since this appears to be a xeroxed copy, I cannot yet confirm or deny. In any case your Honor, this representation will not contradict the wishes of my boss. I will accept the contents of this memorandum your Honor after the manifestation of Atty. Galit.

Court:

Proceed Atty. Galit because I will no longer allow Atty. Yarte to speak for and behalf of the DOJ as well as the PCGG.

Pros. Yarte:

If your Honor please (interrupted)

Court:

Go ahead Atty. Galit.

Atty. Galit:

If your Honor, into the records, I am submitting this April 17, 2007 Memorandum.

Court:

Yes, place it on the record and that you are from DOJ then understood . . .

Atty. Galit:

Without prejudice to the authority given to this humble representation, may I be allowed your Honor that prosecutor Yarte be given the courtesy to speak.

Court:

Go ahead, Atty. Yarte. Pros. Yarte: Your Honor please, we have a pending Motion to Inhibit and I think it is a matter of preferential . . . that this Motion to Inhibit be first ruled upon by this Honorable Court. Court: It's ok with me, I can rule it today. Considering that there is already an opposition and/or summary filed by (interrupted)

Pros. Yarte:

Your Honor please, I haven't received a copy of that opposition.

Court:

Can you furnish him a copy of that today?

Atty. Sison:

Yes, your Honor.

Pros. Yarte:

Your Honor please again, I would like that my copy be formally served with the office as an official receipt. In the first place your Honor, this is not a receiving clerk of the office and I suggest that I receive it officially, your Honor.

Court:

There is a proof of service that it was sent in your office.

Pros. Yarte:

Yes, your Honor, I still have to receive it in the office.

Court:

What is your comment Atty. Galit being the lead prosecutor?

Atty. Galit:

Your Honor, I have so much respect to the distinguished public prosecutor but it is of judicial notice that furnishing a copy is not limited to furnishing the copy that the office of any particular counsel. As a matter of fact, that can be very well made at this moment in time if the defense counsel your Honor, has an extra copy, I suggest that he give it to Prosecutor Yarte, your Honor.

Pros. Yarte:

I vehemently object to that, in the first place your Honor, I manifested a while ago that I still have to check on the authenticity of the memorandum your Honor but it seems that this Honorable Court has egged Atty. Galit to proceed and take over my function as the public prosecutor your Honor. I haven't seen or checked with the office whether or not Atty. Galit was sent a copy of this (interrupted)

Court:

Okay, we will have a 10 minutes recess we will call the office of the Secretary. I will ask my clerk of court to call the office of the Secretary to confirm.

(Recess for 10 minutes)

-session resumed-

Clerk of Court:

Your Honor, I have called already the Office of the Secretary and she said that this Memorandum is authentic, your Honor.

Pros. Yarte:

Okay, your Honor.[34]

Having resolved the issue of the authenticity of the Memorandum authorizing Atty. Galit to prosecute the case, the Regional Trial Court proceeded to resolve the other pending incidents:

Court:

There are two (2) pending incidents, one is the oral motion citing for contempt and the other one is a Motion to Inhibit the Honorable Judge as well as the opposition. You can now argue.

Pros. Yarte:

Yes, your Honor, with respect to the first I have filed an explanation yesterday and I have confirmed with the Clerk of Court if they received the copy of the explanation.

Court:

Do you want to counter argue the explanation? Did you give him a copy of that explanation?

Pros. Yarte:

I sent a copy through registry receipt, your Honor, and if he would like your Honor I can give him a copy of the explanation. I have a copy, I have it photocopied.

Atty. Sison:

I don't need, your Honor. I will just submit, your Honor.

Court:

Okay, second incident is the Motion to Excuse (interrupted)

Pros. Yarte:

Your Honor please, as stated by the counsel for the accused, he has filed an opposition or comment to the Motion and this representation would humbly request only for a period within which to reply on it and then it will be up to the counsel for the accused whether or not he will Answer to that Reply and we can submit it for resolution. That is my request, your Honor.

Court:

He is already authorized because there is already a Memorandum.

Atty. Galit:

May I say something, your Honor.

Court:

You are no longer authorized by the DOJ to represent.

Pros. Yarte:

With the kind permission of Atty. Galit, your Honor.

Atty. Galit:

Your Honor, may we hear your Honor that position of the (interrupted)

Atty. Sison:

Your Honor, I understand today we have another incident. We have a hearing set today based on the previous order by the Honorable Court for the presentation of the last witness. This is supposed to be the continuation of his direct testimony your Honor and I recall the Order of April 11 that today's hearing is intransferrable and that was said in the presence of the distinguished witness your Honor, the former Solicitor General Frank Chavez.

Court:

Yes, I received a copy of the letter coming from the witness. You want to read it?

Atty. Sison:

Your Honor, as I gathered from the record that there was no Motion to Reset the hearing set today so I don't think the Court should be bound by the letter of a witness because this is merely a request but the Order dated April 11 was very clear and intransferrable and that in the event the prosecution failed to present the said witness in today's hearing, your Honor, the direct testimony of the said witness be stricken off the record. Now, in so far as the second incident which is a Motion to Inhibit this Honorable Court, I also gathered from the Motion that it was set for hearing today in order to allow the parties, the prosecution especially to err out or to further elaborate the allegations or averment in the said motion your Honor. This representation received only yesterday a copy of the said Motion and in this we managed to prepare an opposition and filed it early this morning your Honor. And in view of that, we are submitting that Motion to Inhibit together with our opposition thereto to the sound discretion of the Honorable Court.

Court:

How about you from the PCGG?

Atty. Galit:

Your Honor, I . . . to Prosecutor Yarte that he confirm the authority designation of this humble representation as authorized by the Honorable Justice Secretary. Now on the first incident with regards to the Motion to cite for indirect contempt the good prosecutor Honorable Prosecutor George H. Yarte, your Honor, my proposition is this, your Honor. I do believe that oral Motion of defense counsel Atty. Roberto Sison may be procedural. The said Motion your Honor, by the express provision of Rule 71 should be filed separately and be properly . . . Indirect contempt proceedings should be filed in [a] separate petition and I have come to the rescue, your Honor, of good prosecutor Yarte in so far concerned. Now on the second incident of the Inhibition, the Motion for Inhibition is part of the proceedings, part of the prosecution of this particular case and this representation having been so authorized by the Justice Secretary, your Honor, I humbly submit that the same should also be addressed under my control and supervision. Earlier, giving courtesy to Prosecutor Yarte, I requested this Honorable Court that he be allowed to be heard in so far as his position but that suggestion is without prejudice to this humble representation whatever position I may have. Your Honor, in fairness to this Honorable Court, I may not take the stand . . . by the public prosecutor considering the fact that I have read in this Motion the grounds cited thereon . . . Nonetheless your Honor considering the fact that the defense counsel had already filed its opposition, it is this Honorable Court's call now to resolve the same without any further proceedings. And so as your Honor, not to be accused any further of delaying this case, it has been the position of the defense counsel, it is my humble submission that the subject motion for Inhibition be now resolved.

Atty. Sison:

This is something on the issue of citing in contempt of Court. I recall during the previous hearing, your Honor, that I just asked the Court that Prosecutor Yarte be asked to explain why he was absent and it was the witness your Honor who suggested that it was contempt and he asked me if it was direct or indirect and I answered him that it was direct contempt and he said it is wrong. There should be a proper procedure which has to be followed. You are referring to an indirect contempt that is what he said, your Honor and believing and thinking that he was correct although now I realized it is wrong your Honor. I mentioned also indirect contempt but I wasn't . . . that the public prosecutor be cited indirect contempt. I did not say that, your Honor.

....

Pros. Yarte:

In my case your Honor, I have filed my explanation and I think the matter can now be resolved in respect to

the manifestation of Atty. Galit, your Honor. In the terms of Atty. Galit, your Honor, we would like the matter of Motion to Inhibit be resolved with or without the earlier request of this representation that it be given a period within which to reply, your Honor. Again, your Honor, since the Motion to Inhibit was a product and a toil of this representation, your Honor, and was actually based on his personal observations, may I still request that I still be given a period within which to react on the opposition, your Honor, filed by the defense counsel.

Court:

If you want, you can argue now because according to the lead prosecutor now, Atty. Galit, he moves that the two (2) incidents be submitted for resolution today.

Atty. Sison:

We are willing to argue in open court.

Pros. Yarte:

Your Honor, I cannot argue on it because I haven't read the copy of the opposition.

Atty. Sison:

I can make an oral manifestation, your Honor.

Pros. Yarte:

And besides, your Honor, I think it is wiser for me to read it and think it over rather than just stand here and argue based on what I will hear, your Honor.

Court:

You ask the authorized prosecutor.

....

Atty. Galit:

Your Honor, in the continuation of my statement regarding the incident of the Motion for Inhibition, my position is clear on that matter . . . as the designated lead prosecutor in this case, your Honor, it is my proposition that the subject incident be considered submitted for resolution your Honor because the very ground are very simple. The defense counsel was already heard. On the third incident and this is the very important one because probably the Department of Justice is alarmed by the barrage of accusations coming from the defense counsel that this case has been delaying for several years and it is part of the records, your Honor. As a matter of fact, this humble representation brought a letter to Judge del Rosario suggesting that we should always be prepared with all the exhibits or fees . . . that we lose this case by technicality and I have written a letter to that duly filed with the legal office, your Honor. Now this is now the pending incident where the Solicitor General Frank Chavez would have to continue his testimony with regards to some other areas not yet testified to. Now Atty. Chavez is not around. Likewise the records your Honor are not brought by Public Prosecutor Yarte, your Honor. So, that is now the dilemma of the Honorable Court. Now the defense counsel is firm on its stand that the prosecution be deemed the right to have waived to complete the testimony of Frank Chavez. To settle the issue, your Honor, in the presence of Judge del Rosario your Honor who has been handling this case and Prosecutor Yarte. There are several documents which the object of the continuation of testimony of Solicitor General Frank Chavez. I have been vocal enough challenging your Honor the defense counsel to just admit the existence of these documents. If he has the nerved to show and admit the same, probably your Honor there is no reason, your Honor, why we cannot proceed with the formal offer of documentary exhibits and I challenge this, your Honor, in this appropriate proceedings to the defense counsel.[35] (Grammatical errors in the original)

Thereafter, the exchange which led to the termination of presentation of evidence for the prosecution commenced, thus:

Atty. Sison:

May I know what these documents are because if I recall it right, as early as late last year your Honor the said witness would be presented for the purpose of identifying only three (3) documents which are the . . . Affidavit and the newspaper clipping which mentioned his name your Honor. It was an article about him. So I cannot understand why this representation is being asked again to admit on the truthfulness or existence for several documents that agreed upon to be marked and identified in the course of the direct examination of said witness.

Atty. Galit:

Judge del Rosario is present your Honor, and with that memorandum he is still designated subject to his physical condition and even in the presence of Public Prosecutor Yarte. The defense counsel is talking of three (3) documents: The two (2) affidavits of Solicitor General Frank Chavez and the subject newspaper clipping. Now if that would be the case, would the defense counsel stipulate the said two (2) affidavits and the newspaper clippings your Honor has existent and the contents of the two (2) affidavits to form part your Honor of the testimony of Solicitor General Frank Chavez.

Court:

Yes, what can you say Attorney?

Atty. Sison:

Your Honor, I think this representation was very clear on that matter if only to dispense with the presence of that witness, we already agreed as early as before last December to the existence of the documents, your Honor and however, unfortunately for this representation, the prosecution insisted in presenting the witness despite the admission that we already made in so far as the existence of these documents.

Court:

What are these two (2) documents?

Atty. Galit:

The two (2) affidavits, your Honor, Supplemental Affidavit and / Supplement to the Supplement Affidavit. Three (3) Affidavits, your Honor.

Court:

Another one?

Atty. Galit:

Newspaper clipping.

Court:

So three (3) Affidavits as well as the newspaper clipping?

Atty. Galit:

Yes, your Honor.

. . . .

Atty. Galit:

If the defense counsel would like to stipulate, your Honor, first, my request for stipulation is this. The existence of those documents as I have mentioned. Second, your Honor, the contents of this Affidavit should be considered as part and parcel of the testimony already adduced before this Honorable Court by the said witness Frank Chavez. If defense counsel would stipulate on that.

Atty. Sison:

Yes, your Honor, but not on the truthfulness of the contents. Only on the existence.

Court:

You will only stipulate on the existence of the three (3) affidavits as well as the newspaper clipping?

Atty. Sison:

Two Affidavits, your Honor.

....

Pros. Yarte:

Three (3) affidavits with several annexes.

Atty. Galit:

The reason why I am doing this is I would like to emphasized [sic] before this Honorable Court that it is only the defense who is much willing to the early disposition of this case. Only the prosecution is so circumstance your Honor that there is a need for the continuance of the testimony of Solicitor General Frank Chavez to further identify those documents. Now if he is not willing, we are willing to proceed with the form[al] offer of exhibits.[36] (Grammatical errors in the original)

At this point, the Regional Trial Court returned to the Issue of the Motion for Inhibition:

Court:

There is a pending oral motion that based on the letter of former Solicitor General Frank Chavez that he requested that he will not attend for today's hearing because the Court first resolves the Motion for Inhibition.

Atty. Sison:

Yes, your Honor, but I think the witness is too presumptuous that the Motion will not be resolved today. May I say something your Honor in so far as the Motion to Inhibit is concerned because this representation would want to avert further delays in the administration of this case. In lieu of the opposition that this representation filed today, may I be allowed to just withdraw that and make my opposition oral today to give counsel or the public prosecutor to orally argue out also on what I have to say in so far as the Motion to Inhibit is concerned.

Court:

You mean to say that you will withdraw your written opposition?

Atty. Sison:

Because the contention of the public prosecutor your Honor is that they will be asking for ten (10) days from receipt of that and there is no telling when they will receive that your Honor and there is also no telling when Frank Chavez will be available again, your Honor, and as shown by the records, he has been asking for resetting not on a weekly basis but on a monthly, your Honor.

Court:

As prayed for, the written opposition is now withdrawn from the records of this case. You can argue your opposition.

Atty. Sison:

Your Honor, we would like to oppose the Motion filed by the prosecution as showing the records of this case as early as November or December of 2006, the prosecution was already ready to rest their case and on the last minute they made an effort to defer the filing of the formal offer, your Honor, and despite the objection of this representation, the prosecution was granted the request and they were allowed to present their witness Mr. Frank Chavez your Honor and during the course of this hearing, it was agreed by the parties in open Court that the said witness will only be asked to identify two (2) affidavits and a newspaper clipping which he has done already your Honor. And in succeeding hearings . . . over the objection of this representation despite all these objections, the Motion to reset at the instance of the prosecution was granted by this Honorable Court and it should be noted also your Honor that the settings were suggested by the witness. In other words, your Honor, they were done in coordination with the schedule of the witness and in all these instances, the prosecution was granted their request. Now in so far as the allegation giving suspicion on the impartiality of the Honorable Judge when it said that all hearings are intransferrable in . . ., I think it is normal in any jurisdiction in the most courts your Honor because if we will not have that, the case will not come to an end, your Honor. Also your Honor, in so far as the allegation here in this Motion that my client will be running based on the newspaper clipping, your Honor, in the Manila Times dated February 12, 2007, this representation your Honor, obtained from the Commission on Elections a Certification that my client did not file any Certificate of Candidacy for the coming elections, your Honor. So . . . the suspicion of the prosecution that the Motion to Inhibit should be granted because my client is running for public in this jurisdiction, your Honor.

Court:

Okay, you want to argue the comment/opposition on the Motion to Inhibit?

Pros. Yarte:

Your Honor, everything has been fully ventilated with that Motion. If your Honor please, I have to fetch my daughter in Makati at 2:30 and it's now 2:30. May I be allowed to be excused, your Honor. Atty. Galit is here, I have to go to Makati to fetch my daughter. May I be allowed to be excused?

Atty. Galit:

It is alright.

Court:

So what is now the pleasure of the counsels present? You want that the Motion now submitted for resolution?

Atty. Galit:

Submitted, your Honor.

Court:

Order. As prayed for by both parties and after consideration of the written motion for inhibition as well as the oral comment/opposition thereto, this Court resolves to deny the same and considering that the Judge has not manifested any partiality or exhibited bias in favor of the accused. Wherefore, the Motion for Inhibition is Denied. So likewise the manifestation and explanation of prosecutor Yarte about the show cause order, this Court is satisfied with the explanation of Prosecutor George Yarte. So ordered.[37] (Grammatical errors in the original)

Having resolved the Motion for Inhibition, the Regional Trial Court continued to the next incident and the issue of Chavez's absence:

Atty. Sison:

Your Honor, the incident today is supposed to be continuation of direct examination of the witness for the prosecution and I don't see him around your Honor, despite that he should be present for today's hearing.

Court:

That is why I show you the letter coming from the former Solicitor General the reason behind why he did not attend in today's hearing.

Atty. Sison:

Yes your Honor, as I said also, the witness is too presumptuous that the Motion to Inhibit will not be resolved immediately your Honor so in view of that, we will move that the testimonial evidence given by the said witness be stricken off the record . . . of the Order of this Honorable Court dated April 11.

Atty. Galit:

Your Honor, it is too much on the part of the defense counsel to move for the striking out of the testimony of the said witness. As I have said, the issues are simple. The witness has already testified and the witness is still very much willing to continue his testimony. Your Honor, to continue testifying on those three (3) affidavits with all those annexes, rather than strike the testimonies of the witness from the records of this case which would amount your Honor to issue of technicality not favor by jurisprudential authorities, I would like to challenge the defense counsel to allow us, your Honor, to have those testimonies stay on the record and . . . on the contents of those three (3) affidavits as well as those annexes at least as to the existence your Honor and allow the prosecution to wind up your Honor their evidence by filing the complete formal offer of exhibits. In that way, your Honor, any technicality will be avoided.

Atty. Sison:

Your Honor, I said that if only to give teeth to the order of the Honorable Court last April 11, in any event, your Honor, this representation has maintained as early as five months ago that he is willing to stipulate your Honor on the existence of the affidavits of Atty. Chavez as well as the existence of the newspaper clippings but not as to the truth and veracity thereof, your Honor.

Atty. Galit:

Including annexes of those three (3) affidavits, I would like to call the attention of this Honorable Court that Prosecutor Sulit is around and now if the position of the defense counsel would be to stipulate on the existence of these documents, then we will be willing enough to wind up our presentation of evidence and submit the formal offer of evidence . . .

Atty. Galit:

The pending Motion to strike out seems to have been super[s]eded, your Honor, by the defense counsel himself when he entered into stipulation regarding the existence of these documents, your Honor, whom those annexes in the affidavit of Frank Chavez and as a matter of act without waiving the stipulations made by the defense counsel, the Sandigan Prosecutor Wendell Barreras Sulit is showing your Honor to the defense counsel the original of those documents.

Court:

Is that correct Atty. Sison that the testimony of former Solicitor General Frank Chavez remains in the records

considering the existence of three (3) affidavits as well as the newspaper clipping and the annexes?

Atty. Sison:

Yes, your Honor. Only as to the existence of these documents, it is subject to our cross examination.

Atty. Galit:

So the affidavit dated October 6, 1999.

Court:

So the testimony of former Solicitor General Frank Chavez is now deemed terminated, correct me if I'm wrong.

Atty. Galit:

Yes, your Honor.

Court:

You want to cross examine the Solicitor General?

Atty. Sison:

I will like to ask for one setting to cross examine him, your Honor / and that one said setting I will be presenting my first witness.

Court:

How about formal offer of exhibits?

Atty. Galit:

We will be formally offering our exhibits.

Court:

Is that correct, is it procedural Prosecutor Sulit that (interrupted)

Prosecutor Sulit:

At the same time you will cross examine?

Atty. Galit:

We will file our formal offer of exhibits ten (10) days from today.

Court:

But you will cross examine the witness Frank Chavez after the cross examination, you will file your formal offer after the cross examination.

Atty. Sison:

Your Honor, I will not cross examine anymore.

Court:

Okay[.] Order. Considering the manifestation of both counsels, the testimony of the former Solicitor General Frank Chavez is now deemed terminated and that the defense counsel manifested that he is no longer cross

examining the witness. So ordered.[38]

Thereafter, the formal offer of the prosecution was discussed:

Court:

. . . .

Do you want to formally offer orally or in writing?

Atty. Galit:

I could not do that, your Honor.

Court:

How many days prosecutor?

Pros. Sulit:

Your Honor, I thought your Honor that I am here for the comparison of the records and I brought with me the authenticated and may I show to the Honorable Court for the Honorable Court's appreciation of the originals of the annexes of Solicitor General Frank Chavez' affidavit of October 9, 1999.

Court:

I will just delegate my clerk of court.

Pros. Sulit:

Yes, your Honor, but I would wish that the Honorable Judge himself will go over a sample of the authenticated copies from our consulate in Berne, Switzerland. These documents, your Honor, were released to us by the District Magistrate of Zurich, Peter Consandey, and the process is that: He had these documents authenticated by their own judges and thereafter authenticated by our own Consular [O]fficer Fe Pangilinan Klinger in Berne, Switzerland. And afterwards, these documents were again sent to the Solicitor General Frank Chavez who was then the Solicitor General who initiated these complaints via diplomatic vouch, your Honor, thru Ambassador Aschalon who was then our Ambassador in Switzerland.

Court:

Okay, noted.

Pros. Sulit:

The marked of authentications are all there, your Honor.

Atty. Galit:

May we put on the records, your Honor, that the Honorable Court was handed by Prosecutor Wendell, an original of the said document.

Court:

Okay.

Pros. Sulit:

Your Honor, we have several of those documents all made attachments to the affidavit of former Solicitor General Frank Chavez which I believe he has testified already and identified in the course of his direct

testimony in your previous trial. We are now in the process of comparing these documents your Honor, in the presence of the defense counsel.

Court:

Can you make a manifestation whether or not faithful reproduction of the original?

Pros. Sulit:

Yes, your Honor, we are now in exhibit "G".

Court:

So what is your manifestation Atty. Sison?

Atty. Sison:

Well in so far as exhibits "A-F" and submarkings are concerned, your Honor, they appear to be faithful reproduction of the documents identified by the witness.

....

Atty. Sison:

Exhibit "I" and "H" earlier identified by the witness are faithful reproduction of the original kept by Prosecutor Sulit, however, your Honor I would like to make an additional manifestation that the translations attached to the originals are unofficial borne by the very documents, your Honor which I quote unofficial translation by M. R. Aguinaldo.

Pros. Sulit:

May I be allowed to speak, your Honor.

Court:

Yes, go ahead.

Pros. Sulit:

As explained to me by Atty. Chavez, at the time that they were crafting these complaints against the Marcoses, there were documents in the foreign languages like French, German and Swiss documents that need to be translated into English and they form a task force Umungos and I think two (2) of the ladies or maybe four (4) of them came from the Department of Foreign Affairs and they were the Official translators and so they did the unofficial although it is called there unofficial translations, we made it included them to form part of the record for our clearer understanding of the foreign document.

Court:

I will note your manifestation Prosecutor Sulit.

Atty. Sison:

Can we make an understanding with the prosecution your Honor that the translators are the translators designated by the prosecution alone?

Pros. Sulit:

By the Department of Justice. Judge del Rosario is here, he would know your Honor, because he was part of the Task Force Umungos.

Court:

Department of Justice or Department of Foreign Affairs?

Judge del Rosario:

Department of Foreign Affairs.

Atty. Sison:

Without the participation of the accused, your Honor.

Court:

I will note your manifestation.

Atty. Sison:

Thank you, your Honor. The document identified as exhibit "J" by the witness in his Affidavit is a faithful reproduction of the original which is with Prosecutor Sulit and I make the same manifestation in so far as the translation is concerned that it was clone in the instance of the prosecution, your Honor, without the participation of the accused.

Atty. Sulit:

I think there is no translation here, your Honor. This is an original document. Your Honor, this was signed by Martin Grossman in English language this time.

Atty. Sison:

Yes, your Honor, I stand corrected your Honor but I would like to manifest that this Certificate of Authenticity marked as exhibit "J- 2" is also a photocopy.

Atty. Sulit:

A photocopy certified true by the Presidential Commission on Good Government, this is a certified true copy and duplicate photocopy are faithful reproduction of the documents on file with the PCGG under the custodian Lourdes Magno your Honor.

Atty. Sison:

Without indicating that this was derived out of an original copy that is kept with the PCGG.

Court:

I will note both manifestations. Next exhibit.

Atty. Sison:

I would like to manifest, your Honor, that these documents identified by the witness marked as exhibit "K-Q" are faithful reproduction of the photocopies brought along by Prosecutor Sulit. In other words, your Honor, these documents are also photocopied, your Honor.

Atty. Galit:

This are certified true copy by the PCGG office, your Honor.

Atty. Sison:

Yes, your Honor, but I don't think the witness was ever presented.

Court:

Anyway, I will note both manifestations made by Prosecutor Sulit, Atty. Galit and Atty. Sison.

Atty. Galit:

Your Honor, we hereby manifest that the custodian of subject document in the person of Lourdes Magno will be available in these coming days to present the original of these documents from which source the said documents were certified.

Court:

Okay, noted.

Atty. Sison:

Is counsel telling this representation that they have the original of exhibit "Q-6"?

Pros. Sulit:

I saw them, your Honor, only that they cannot give that to me and I don't know why. They kept it in their files.

Court:

The originals are with the PCGG?

Pros. Sulit:

Yes, your Honor. I think those documents were sent to them directly, I don't know how but they are not willing to . . . with the original but I saw the original.

Atty. Galit:

These documents were only marked as certified true copy of the original from the PCGG.

Atty. Sison:

Anyway, I would like to manifest that I think the parties should not lost track of the fact that this is a case of dollar salting your Honor. (off the record)[39] (Grammatical errors in the original)

The parties then proceeded to the comparison of the exhibits intended to prove the existence of the foundations, the names of which were used to create the bank accounts:

Atty. Sulit:

We are now going to the documents that will prove the existence of the foundations, Trinidad, Palmy, Maler, Rayby and any other documents.

Court:

Next exhibit?

Atty. Sison:

Exhibit "R". The documents presented by the prosecution except that exhibit "R" is concerned, the best document is a certified true copy correct photocopy of the document on file which does not say if it is original or not.

Pros. Sulit:

How about the other documents, do you want me to bring it?

Court:

So no more?

Pros. Sulit:

No, there is another your Honor. The original copies, compliance dated February 16, 2001 and the attached First Supplemental Affidavit of Francisco Chavez dated February 15, 2001.

Atty. Sison:

We admit the existence of that already, your Honor.

Pros. Sulit:

How about the second supplemental affidavit on the Trinidad foundation dated February 16, 2001?

Atty. Sison:

The existence again, your Honor.

Pros. Sulit:

And how about the attached documents which were also certified Xerox copy of the PCGG under the same person Ma. Lourdes Magno.

Atty. Sison:

May we browse to the original of these documents.

Pros. Sulit:

Okay.

Atty. Sison:

The records will tell out they are certified Xerox copies. I don't know what that means by the records custodian of the PCGG.

Atty. Galit:

Your Honor these are being certified Xerox copy as indicated in the subject document.

Court:

I will note both manifestations.

Pros. Sulit:

Statement of Account of Trinidad Foundation and they are all certified Xerox copy on the one filed at the PCGG. They were sent to the PCGG.

Judge del Rosario:

Yes, statement of accounts of Marcoses.

Pros. Sulit:

We are willing to stipulate that the existence of the annexes of the supplemental affidavit of the witnesses, your

Honor, existence as contained part of the annexes of the supplemental affidavit.

Atty. Galit:

Your Honor, we would like to put it on record that the document bears the stamped of Certified Xerox copy and under the name of Ma. Lourdes Magno of the PCGG, your Honor.

Court:

Noted.

Pros. Sulit:

And there are document number. This document were given serial numbers from Switzerland.

Atty. Galit:

Trinidad Foundation 010101.

Pros. Sulit:

Those are the control number when they were sent to the Philippines.

Atty. Galit:

Second supplemental affidavit of February 16, 2001.

Pros. Sulit:

We stipulate that they do exist as part of the annex of the second supplemental affidavit of Frank Chavez.

Court:

Noted. So how many days you will formally offer your exhibits?

Atty. Galit:

Considering your Honor the predicament that the records are still with the DOJ, the original 10 days is allocated to the prosecution may we ask that we be given additional five (5) days to make a total of fifteen (15) days.

Court:

No objection?

Atty. Sison:

We leave it to the sound discretion of the Honorable Court.

Court:

Fifteen days from today to formally offer your exhibits. How many days to file your comment? You want it orally or written?

Atty. Sison:

I will just ask for two (2) days to file your written comment/opposition.

Atty. Galit:

I undertake to furnish the defense counsel on a personal basis.

Court:

I will now set the case for initial presentation of defense evidence. Can you set it on several dates?

Atty. Galit:

Yes, your Honor.[40] (Grammatical errors in the original)

After the April 24, 2007 hearing, Chavez filed a Petition for Certiorari, Prohibition, and Mandamus[41] dated May 3, 2007 with the Court of Appeals, docketed as C.A.-G.R. No. 98799, praying that the Court of Appeals declare null and void Judge Pampilo's order in open court denying the motion to inhibit. Chavez also asked that the Court of Appeals issue a temporary restraining order or a writ of preliminary injunction, ex-parte, and that it enjoin Judge Pampilo from further proceeding with, hearing, and deciding the criminal cases against Imelda. Finally, he prayed that Judge Pampilo be mandated to inhibit himself in the criminal cases against Imelda.[42]

In its May 22, 2007 Resolution, the Court of Appeals granted the prayer for the issuance of a writ of preliminary injunction.[43]

The Court of Appeals resolved the petition in its February 28, 2008 Decision[44] and denied Chavez's petition for certiorari, on the basis that Judge Pampilo's alleged bias was not sufficiently substantiated. It found that none of the grounds for mandatory inhibition of Judge Pampilo was present in this case. Further, there was insufficient showing of bias to substantiate Chavez's claim of bias on the part of Judge Pampilo. The Court of Appeals found that the prosecution's own acts delayed its presentation of evidence and that the prosecution had been granted a six (6)-month extension to complete its presentation of evidence. Thus, the Court of Appeals ratiocinated that there was no undue haste on the part of Judge Pampilo when he ordered that the prosecution rest its case. It further found that the claims of prejudice against Prosecutor Yarte were likewise unsubstantiated.[45]

The dispositive portion of the Court of Appeals February 28, 2008 Decision read:

WHEREFORE, in view of the foregoing, the petition for certiorari is hereby DISMISSED.[46]

Thus, on March 10, 2008,[47] the Regional Trial Court rendered its May 28, 2007 Decision, acquitting accused Imelda and Hector T. Rivera on the ground of reasonable doubt.

It found the prosecution evidence wanting and did not mince words in describing the various failures of the prosecution.

It noted that only two (2) witnesses were presented and that the prosecution's evidence was based on hearsay.[48] It found that the prosecution's case was anchored on documents secured from the Swiss authorities, but that the only witness presented to identify the documents was former Assistant Solicitor General and Presidential Commission on Good Government Commissioner Del Rosario.[49] It quoted the transcript of stenographic notes to illustrate that Del Rosario had no personal knowledge about the documents which he testified on:

Atty. Sison:

Q: Now, Mr. Witness the documents that you attached in your main affidavit and supplemental affidavits may I know where you obtained these documents all of them Mr. Witness?

A: Well, I obtained them from the PCGG and the OSG . . .

Q: Did you come to know where the PCGG or the OSG derived these documents?

A: It came from Switzerland all these documents, Swiss bank documents.

Q: So in other words Mr. Witness all of the documents which you identified in the proceedings in this case were derived from Switzerland?

A: Yes, sir.

Q: There is not any document that you identified that was derived from any other source Mr. Witness?

A: Yes, sir . . . [50] (Grammatical errors in the original)

The Regional Trial Court faulted the prosecution's reliance on hearsay testimony. It held:

To give weight to hearsay testimony gravely violates the constitutional right of the accused to meet the witnesses face-to-face and to subject the source of the information to the rigid test of cross-examination, which is the only effective means to test their truthfulness, memory, and intelligence.

Furthermore, the prosecution in this case presented as evidence voluminous documents purporting to be authentic records of the Marcos accounts in Swiss banks yet not one of the bank officers who had personal knowledge of said accounts was ever presented in Court to identify the documents and attest to the veracity of their contents. Even assuming that the said bank officers could not possibly make the trip to the Philippines, there was no reason why their testimonies could not have been taken in Switzerland by deposition.

Del Rosario himself admitted during the course of his testimony in these cases that he was authorized to take depositions of witnesses, and again the Court quotes from the stenographic notes . . .

"ACSP Mariano

Q: Judge, you stated in your previous statement that you are now special counsel or legal consultant of PCGG. What are your main functions as such special counsel or legal consultant?

(Del Rosario)

A: My special function as consultant of PCGG, I am tasked to assist in the prosecution of all criminal cases against Mrs. Imelda Marcos all in the Regional Trial Court and in the Sandiganbayan and I am also tasked to take depositions of witnesses, rather evaluate additional evidence for the purpose of effectively prosecuting these cases against Mrs. Marcos . . .

During the course of the trial in these cases, Del Rosario revealed that he had been to Switzerland in connection with his investigation of these cases, and that sometimes he went alone and at other times he went with Solicitor General Chavez, which this Court takes to mean that he (Del Rosario) had been to Switzerland many times. Yet he never bothered to communicate with, let alone take depositions, of the bank officers who could have identified the Swiss bank documents presented by the prosecution as evidence in these cases.

Even assuming that Del Rosario was too busy with his investigative functions that he simply did not have time to take depositions, there were other persons available in Switzerland who could have legally taken such depositions if only Solicitor General Chavez, or any of his agents like Del Rosario had the foresight and the good sense to request it.[51]

The Regional Trial Court named several witnesses that the prosecution should have presented:

- Peter Cosandey, the magistrate who examined the bank documents;
- Dr. Theo Bertheau of Zurich, who, according to Del Rosario, was instructed by the Marcoses to arrange for a lawyer in Liechtenstein to create Azio Foundation;
- The alleged Marcos trustees in Switzerland: Mr. C. Walter Fessler, Cusnach Souvion, Jr., Mr. Ernest Scheller, and Dr. Helmuth Merlin;

- Martin Grossman who signed the Certificate of Authentication of Business Records[.][52]

The Regional Trial Court noted that the prosecution repeatedly asked Del Rosario to identify signatures that he was not competent to identify:

Many times during the course of the trial in these cases, the prosecution asked Del Rosario to identify signatures of persons whose handwriting he was not competent to testify on and despite his own admission that he was not a handwriting expert. And again, the Court quotes from its own stenographic records. (TSN, June 10, 2003, page 17-19):

"(State prosecutor)

Q: Now on page 2 of this Exh. "X-Common" appears a legible signature of Imelda Romualdez Marcos. In the course of your investigation, were you able to determine the person who affixed that signature?

(Del Rosario)

A: Yes, your honor, I found out after investigation that this contract really signed by Imelda Romualdez Marcos, this belongs to her, this contract opening of account in Swiss Credit Bank . . .

Q: Do you know who this Imelda Marcos referred to in that document?

Atty. Parungao: Excuse me, your honor, may we be allowed to see the document first? Your honor, may I just manifest that the signature has no print or any indication that the signature belongs to a certain person. It is just a signature which if read, reads Imelda Romualdez Marcos but there is no indication whose signature this is.

Court: No printed name.

Atty. Parungao: Yes, your honor."

And in another instance . . .

"SP Carretas

Q: Now on the lower right hand margin of page 2 of Exhibit "W-Common" appear a signature below the printed word the Depositor. In the course of your investigation, were you able to identify or know the signature affixed in this document below the printed words the Depositor?

A: The very usual and familiar signature of the late President Ferdinand E. Marcos.

SP Carretas: May I request that the signature of Ferdinand E. Marcos appearing on the lower right hand margin of page 2 of Exhibit W-Common be marked as Exhibit "W-2."

Court: Mark it.

SP Carretas

Q: And on the lower left hand margin of page 2 of the same exhibit appears a signature below the printed words Swiss Credit Bank. Were you able to find out in the course of your investigation the person who affixed this signature?

A: I do not know the name of the person who affixed the signature but this could be the authorized representative of Swiss Credit Bank.

Q: Why do you say so?

A: Because it appear below the words Swiss Credit Bank and it is a contract, sir."

Similar exchanges between the state prosecutor and star witness Del Rosario were repeated many times during the

course of the trial with respect to the signatures of the late President Marcos and Mrs. Marcos. But the most absurd of all was when on cross-examination, Del Rosario could not identify the signature of Martin Grossman, the person who issued the Certificate of Authenticity of the Swiss bank documents used by the prosecution in these cases, to wit (TSN, Oct. 10, 2006):

"Q: Now Mr. Witness in this Certificate of Authenticity of Business Records, appears a signature above the printed name Martin Grossman. Do you recognize that signature?

A: I am not familiar with the signature, sir.

Q: You are not familiar. So in other words, you do not know if this is the signature of Mr. Martin Grossman, whose printed name appears below that?

A: Yes, but I rely on the Certification . . ."[53]

The Regional Trial Court also noted that the documents presented were photocopies and that the prosecution had not established any basis for presenting them instead of the original documents.[54]

Thus, the Regional Trial Court found that the prosecution failed to present competent proof of the alleged offense and of the conspiracy among the accused. Regarding the prosecution's attempt to establish the conspiracy, the Regional Trial Court held:

The prosecution merely presented documentary evidence that Roberto S. Benedicto invested in the Philippine-issued dollar-denominated treasury notes. It did not say that Mr. Benedicto did the transaction for herein accused. He did it for himself alone. In fact, under the Compromise Agreement executed in November 1990 between the government and Mr. Benedicto, there was no mention about the above alleged investments of Mr. Benedicto in behalf of herein accused. Otherwise, Mr. Benedicto would have made his being the alleged dummy a part of the Compromise Agreement.

Furthermore, neither did the prosecution submit any documentary proof that the three Swiss banks from where the alleged dollar remittances emanated, namely, Bank Hofmann, SBC and Banque Paribas, held the dollar notes for accused Marcos . . .

The Court is cognizant of the fact that the government has expended untold time, effort and money in the prosecution of these cases, but the accused has the Constitutional presumption of innocence. The prosecution in these cases failed to discharge the burden of proof required in criminal cases. This court cannot in all conscience convict the accused on the basis of mere hearsay and on the basis of documents which were not authenticated and proved in the proper manner.[55]

The dispositive portion of the Regional Trial Court Decision read:

WHEREFORE, foregoing premises considered and pursuant to applicable jurisprudence and law on the matter, the accused IMELDA ROMUALDEZ MARCOS and HECTOR T. RIVERA are hereby ACQUITTED on the ground of reasonable doubt.[56]

Chavez filed a Motion for Reconsideration[57] of the Court of Appeals February 28, 2008 Decision. As the Regional Trial Court Decision was promulgated soon thereafter, on March 10, 2008,[58] and within Chavez's period for filing a motion for reconsideration with the Court of Appeals, Chavez included in his motion a prayer for nullification of the Regional Trial Court's judgment of acquittal.

In support of this prayer, Chavez argued that the acquittal was in violation of the Court of Appeals injunction, pointing out that the injunction dated July 20, 2007 stated that it would subsist "pending final resolution of the present petition or unless a contrary order is hereafter issued by this Court." [59] He insisted that his case before the Court of Appeals was still pending final resolution because of his motion for reconsideration and that there

had been no order dissolving the injunction.[60]

In its November 24, 2008 Resolution, the Court of Appeals denied the Motion for Reconsideration and the prayer for nullification of the Regional Trial Court March 10, 2008 Decision. It held that the prayer for nullification was improper considering that it was not covered in the original petition for certiorari. It also noted that the assailed Regional Trial Court Decision was rendered after the Court of Appeals had already denied the petition for certiorari. The dissolution of the writ of injunction was deemed carried with the dismissal of the petition for certiorari.[61]

Thus, Chavez filed this Petition for Review on Certiorari before this Court. After Imelda filed her Comment[62] and Chavez filed his Reply,[63] this Court gave due course to the petition.[64] Chavez filed his Memorandum,[65] and Imelda, after seeking four (4) extensions of time to file,[66] finally filed her Memorandum[67] by mail on January 4, 2010. On October 3, 2016, this Court required the parties to move in the premises and to inform this Court of pertinent developments which may be of help in the disposition of this case, or which may have rendered it moot and academic.[68] On November 18, 2016, counsel for petitioner informed this Court that petitioner Chavez passed away on September 11, 2013.[69] Thereafter, counsel for petitioner filed a Motion for Resolution[70] arguing that petitioner's action survives his death as it involves an issue not personal to him, namely, the national coffers, and that his death does not render the remedies prayed for moot and academic, or impossible.[71]

Petitioner claims that the Court of Appeals should have appreciated Judge Pampilo's demeanor and over-eagerness to decide the case as evidence of grave abuse of discretion.[72] He characterized Judge Pampilo's scheduling of the prosecution's witness as a "noose-tightening tactic." [73] He claimed that due to the unreasonableness of the schedule for his testimonies, it was inevitable that the prosecution would have to request for adjustments, and thereafter accept any resetting with the warning that its presentation of evidence would be deemed terminated.[74] Judge Pampilo made it impossible for petitioner or for Department of Justice State Prosecutor Yarte to appear at the hearing dates set by the court.[75] By orally denying the Motion to Inhibit on April 24, 2007, Judge Pampilo essentially forced the prosecution to present its evidence on the very same day, or end its presentation of evidence.[76] Petitioner also claims that Judge Pampilo, Atty. Galit, and Atty. Robert Sison (Atty. Sison) all acted with a common objective of railroading the cases. He insists that this common objective is evident from what transpired on April 24, 2007.[77] In particular, petitioner points out the fact that Judge Pampilo interpreted the Department of Justice Memorandum dated April 17, 2007 as designating Atty. Galit as the lead prosecutor and refused to allow Prosecutor Yarte to argue as the lead prosecutor. This is despite the fact that the Department of Justice Memorandum did not designate Atty. Galit as the lead prosecutor or exclude Prosecutor Yarte from arguing before the court. Petitioner alleges that the Department of Justice Memorandum stated:

[A] directive is hereby made authorizing and/or designating PCGG Special Counsel, Atty. Napoleon Uy Galit with or without the presence of any public prosecutors to prosecute the above-referred cases . . . [78]

Petitioner maintains that it was revealing that Judge Pampilo swept aside the arguments of Prosecutor Yarte.[79] He also faulted Judge Pampilo for orally deciding the Motion to Inhibit,[80] averring that it was hastily done.[81] He believes that Atty. Galit acted as if he were Prosecutor Yarte's adversary instead of a fellow prosecutor[82] and that because of this concerted action among Judge Pampilo, Atty. Sison, and Atty. Galit, Prosecutor Yarte had to walk out of the hearing.[83]

Petitioner asserts that the commonality of purpose was also shown by the risky procedure resorted to by Atty. Sison, who, in one hearing, waived his written opposition to the Motion to Inhibit, the cross-examination of petitioner, and the presentation of evidence:

17. Also, the conduct of counsel for Imelda Marcos provides yet another glimpse into a sort of "commonality of purpose" shared by Judge Pampilo and Imelda Marcos. When Prosecutor Yarte insisted on his right to file a reply to Atty. Sison's opposition to the Motion to Inhibit, the latter conveniently withdrew his written opposition. When Judge Pampilo realized that he could not proceed with the presentation of evidence for the accused without first requiring the prosecution to submit its formal offer of evidence, Atty. Sison, who had earlier sought a single setting for petitioner's cross-examination and the presentation of Imelda Marcos' evidence, suddenly relinquished his intention to cross-examine the petitioner. Then, later, when it was already time for him to present evidence for the accused (Imelda Marcos), Atty. Sison merely bracketed and marked a solitary statement in the testimony of Atty. Cesario del Rosario and then waived further presentation of evidence. He resorted to this risky procedure instead of being more cautious by filing a Demurrer to Evidence.[84]

Petitioner also assails the circumstances surrounding the promulgation of Judge Pampilo's decision. He suggests that there must have been a direct liaison between Judge Pampilo and Atty. Sison, because without one, under the circumstances, respondent Imelda would not have been able to file an Urgent Motion to Lift Temporary Restraining Order Ad Cautelam in time for the original scheduled promulgation to proceed.[85] Further, he alleges that Judge Pampilo told reporters that promulgation would proceed on May 23, 2007 despite the issuance of the Temporary Restraining Order because respondent Imelda was working on having the Temporary Restraining Order lifted:

25. . . . On 23 May 2007, Judge Pampilo went to court ready to promulgate his decision despite the fact that he was already served with the trial court's TRO in the afternoon of 22 May 2007. When Judge o was approached by news reporters if the promulgation would push through, Judge Pampilo answered in the affirmative since Imelda Marcos is supposedly working out a way to have the TRO lifted, obviously referring to Imelda Marcos' Motion to Lift TRO dated 23 May 2007. When no order from the Court of Appeals came, Judge Pampilo asked the reporters to come back by 2:00 p.m. of that same day, since according to him, by that time, Imelda Marcos might be able to secure the lifting of the TRO. Having failed in his expectations, Judge Pampilo rescheduled the promulgation of judgment to 30 May 2007 as may be gleaned from page 43 of his Decision. He just would not give up in his attempts to grant Imelda Marcos an early acquittal despite orders from the Court of Appeals. How can such a conduct be explained?

26. Then, finally, as mentioned earlier, Judge Pampilo did not even await final resolution of the instant case when he promulgated on 10 March 2008 his judgment of acquittal. Again, consistent with the Rules of Court, it must be stressed that petitioner was permitted to file and had in fact filed - his Motion for Reconsideration of the Court of Appeals' 28 February 2008 Decision. Therefore, the 28 February 2008 Decision is not yet final. As such, the writ of preliminary injunction issued by the Court of Appeals is still effective because the Court of Appeals' 20 July 2007 Resolution clearly states that the writ of preliminary injunction shall subsist "pending final resolution of the present petition or unless a contrary order is hereafter issued by this Court." Judge Pampilo's apparent fervor to exculpate Imelda Marcos even in violation of the Court of Appeals' injunction is only consistent with something glaringly obvious from the very beginning: his bias and partiality.[86]

Petitioner further argues that Judge Pampilo acted with grave abuse of discretion for promulgating his decision in violation of a subsisting injunction,[87] and for abruptly terminating petitioner's testimony.[88] He insists that his testimony would have been sufficient to render admissible the documents which Judge Pampilo found inadmissible as evidence.[89]

Respondent Imelda argues that the petition should be dismissed for raising questions of fact. Further, the undisputed facts on record constitute sufficient justification for Judge Pampilo's decision to tenninate the prosecution's presentation of evidence.[90]

This Court resolves the following issues:

First, whether or not the petition should be dismissed for raising questions of fact;

Second, whether or not the Regional Trial Court May 28, 2007 Decision acquitting respondent Imelda R. Marcos was issued in violation of a subsisting injunction; and

Finally, whether or not the records show that Judge Silvino T. Pampilo, Jr. acted with bias in favor of respondent Imelda R. Marcos.

This Court denies the Petition.

I

A petition for review on certiorari under Rule 45 shall only pertain to questions of law. Further, the Rules of Court mandate that petitions for review distinctly set forth the questions of law raised.[91]

This petition for review on certiorari attributes the following errors to the Court of Appeals:

- a. The Court of Appeals committed reversible error by refusing to consider Judge Pampilo's demeanor and over-eagerness to decide the criminal cases against Imelda Marcos intended to culminate in a judgment of acquittal - as clear evidence of grave abuse of discretion warranting the issuance of a Writ of Certiorari.
- b. The Court of Appeals committed reversible error by refusing to consider Judge Pampilo's flagrant violation of a subsisting writ of preliminary injunction and, ultimately, the prosecution's constitutional right to due process.[92]

Essentially, petitioner takes issue with how the Court of Appeals interpreted the acts of Judge Pampilo and found no manifest partiality, which are clearly not questions of law. He did not even attempt to frame the issues as questions of law. By claiming that Judge Pampilo violated a writ of injunction, petitioner attempts to cloak the second alleged error with some semblance of being a question of law. However, petitioner does not provide any legal basis or coherent legal argument to support the claim that a writ of injunction was violated, and this claim is totally specious.

Although this Court may, in exceptional cases, delve into questions of fact, these exceptions must be alleged, substantiated, and proved by the parties before this Court may evaluate and review facts of the case.[93] Petitioner having failed to establish the basis for this Court to evaluate and review the facts in this case, the petition may be dismissed on this ground.

II

The Regional Trial Court Decision dated May 28, 2007 and promulgated on March 10, 2008 was not issued in violation of the Court of Appeals writ of injunction. When this Regional Trial Court Decision was promulgated, the writ of injunction had already been dissolved.

As stated by the Court of Appeals in its November 24, 2008 Resolution, the denial of the petition for certiorari carried with it the dissolution of the writ of injunction.[94]

Petitioner makes much ado of the fact that the text of the injunction stated that it subsisted "pending final resolution" of the petition, ignoring the rest of the text which provided that it would be dissolved if a contrary order was issued by the Court of Appeals.[95] Indeed, the Court of Appeals, in its November 24, 2008 Resolution, resolved this issue, stating:

[I]t should also be considered that at the time of the rendition of the said RTC decision, the Decision of this Court denying the petition for certiorari had already been issued. Although the said Decision itself did not

expressly provide for the dissolution of the writ of injunction the same is deemed carried with the dismissal of the petition for certiorari.[96]

In other words, the Court of Appeals' decision denying the petition for certiorari carried with it a contrary order dissolving the injunction. Petitioner fails to address this point and does not show how it is an error of law. Thus, the argument that a subsisting injunction was violated is clearly frivolous, if not misleading, and intended only to make it appear as though the petition has some semblance of basis.

III

Whether or not to voluntarily inhibit from hearing a case is a matter within the judge's discretion. Absent clear and convincing evidence to overcome the presumption that the judge will dispense justice in accordance with law and evidence, this Court will not interfere.[97]

On the inhibition of judges, Rule 137 of the Rules of Court provides:

Section 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The import of Rule 137, Section 1 of the Rules of Court was explained in *Pimentel v. Salanga*:[98]

Thus, the genesis of the provision (paragraph 2, Section 1, Rule 137), not to say the letter thereof, clearly illumines the course of construction we should take. The exercise of sound discretion - mentioned in the rule-has reference exclusively to a situation where a judge disqualifies himself, not when he goes forward with the case. For, the permissive authority given a judge in the second paragraph of Section 1, Rule 137, is only in the matter of disqualification, not otherwise. Better stated yet, when a judge does not inhibit himself, and he is not legally disqualified by the first paragraph of Section 1, Rule 137, the rule remains as it has been he has to continue with the case.

So it is, that the state of the law, with respect to the situation before us, is unaffected by the amendment (paragraph 2 of Section I, Rule 137) introduced in the 1964 Rules. And it is this: A judge cannot be disqualified by a litigant or his lawyer for grounds other than those specified in the first paragraph of Section I, Rule 137.

This is not to say that all avenues of relief are closed to a party properly aggrieved. If a litigant is denied a fair and impartial trial, induced by the judge's bias or prejudice, we will not hesitate to order a new trial, if necessary, in the interest of justice. Such was the view taken by this Court in *Dais vs. Torres*, 57 Phil. 897, 902-904. In that case, we found that the filing of charges by a party against a judge generated "resentment" on the judge's part that led to his "bias or prejudice which is reflected in the decision." We there discoursed on the "principle of impartiality, disinterestedness, and fairness on the part of the judge" which "is as old as the history of court." We followed this with the pronouncement that, upon the circumstances obtaining, we did not feel assured that the trial judge's findings were not influenced by bias or prejudice. Accordingly, we set aside the judgment and directed a new trial.

Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. It ill behooves this

Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, we are not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him. We have had occasion to rule in a criminal case that a charge made before trial that a party "will not be given a fair, impartial and just hearing" is "premature." Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice, "without respect to person and do equal right to the poor and the rich." To disqualify or not to disqualify himself then, as far as respondent judge is concerned, is a matter of conscience.

All the foregoing notwithstanding, this should be a good occasion as any to draw attention of all judges to appropriate guidelines in a situation where their capacity to try and decide a case fairly and judiciously comes to the force by way of challenge from any one of the parties. A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.[99] (Emphasis in the original)

Thus, since the second paragraph of Rule 137, Section 1 was introduced, this Court has periodically repeated that it shall always presume that a judge will decide on the merits of the case without bias. Allowing a judge to inhibit without concrete proof of personal interest or any showing that his bias stems from an extrajudicial source will open the floodgates to abuse.[100]

No concrete proof of Judge Pampilo's personal interest in the case was presented. There was no showing that his bias stems from an extrajudicial source. Not only that, but none of his acts, as shown on the record, was characterized by any error.

Petitioner finds fault in the scheduling of his testimony but fails to show how it was irregular. He characterizes the scheduling as "noose--tightening," for being scheduled on "unreasonably proximate" dates.[101] Far from the scheduling being evidence of partiality, it was aligned with this Court's rules on expeditious disposition of cases and the mandatory continuous trial system.

Supreme Court Administrative Circular No. 3-90 requires all trial courts to adopt the mandatory continuous trial system pursuant to Administrative Circular No. 4 and Circular No. 1-89. On trials for civil and criminal cases, Supreme Court Circular No. 1-89 provides, in part:

II. TRIAL (Civil, Criminal)

....

4. The issuance and services of subpoenas shall be done in accordance with Administrative Circular No. 4

dated September 22, 1988.

5. A strict policy on postponements shall be observed.

6. The judge shall conduct the trial with utmost dispatch, with judicious exercise of the court's power to control the trial to avoid delay.

7. The trial shall be terminated within ninety (90) days from initial hearing. Appropriate disciplinary sanctions may be imposed on the judge and the lawyers for failure to comply with this requirement due to causes attributable to them.

8. Each party is bound to complete the presentation of his evidence within the trial dates assigned to him. After the lapse of said dates, the party is deemed to have completed his evidence presentation. However, upon verified motion based on serious reasons, the judge may allow a party additional trial dates in the afternoon; provided that said extension will not go beyond the three-month limit computed from the first trial date.

Thus, the dates provided for petitioner's testimony were in accordance with the rules and guidelines issued by this Court.

Petitioner also claims that Judge Pampilo could have accommodated the prosecution's requests for postponement, but he did not. However, Judge Pampilo's reluctance in sanctioning further delays and in denying motions to postpone hearings was also in accordance with the rules on the expeditious resolution of cases. This Court cannot assume bias or arbitrariness based on the denial of requests of postponement.[102]

There was nothing remarkable about the denial of the Motion to Inhibit. It was not hasty, and whether to deny it orally in court is the prerogative of the judge, who could have decided it as soon as its factual basis had been clearly laid.[103] Further, counsel for the prosecution expressly agreed that the motion be submitted for resolution.[104]

Petitioner's claims that Atty. Galit acted as an adversary instead of co- counsel for Prosecutor Yarte are outlandish. The transcript reveals that Atty. Galit was nothing if not courteous to Prosecutor Yarte. Petitioner also avers that Prosecutor Yarte had to walk out of the hearing because of the concerted action taken against him.[105] However, the transcript shows that he asked permission from Judge Pampilo to allow him to pick up his daughter in Makati.[106] This incident was not the first questionable act taken by Prosecutor Yarte as it appears that he chose to attend an event in Boracay instead of the April 11, 2007 hearing, despite the denial of his motion to cancel it. In no way can these actions be attributed to bias on the part of Judge Pampilo.

Petitioner Chavez believes that respondent Imelda would not have been acquitted had he been allowed to testify. However, Judge Pampilo did not even have to decide on whether to allow petitioner Chavez to continue his testimony because both parties agreed that his testimony would be terminated during the April 24, 2007 hearing:

Atty. Sison:

Your Honor, the incident today is supposed to be continuation of direct examination of the witness for the prosecution and I don't see him around your Honor, despite that he should be present for today's hearing.

Court:

That is why I show you the letter coming from the former Solicitor General the reason behind why he did not attend in today's hearing.

Atty. Sison:

Yes your Honor, as I said also, the witness is too presumptuous that the Motion to Inhibit will not be resolved

immediately your Honor so in view of that, we will move that the testimonial evidence given by the said witness be stricken off the record . . . of the Order of this Honorable Court dated April 11.

Atty. Galit:

Your Honor, it is too much on the part of the defense counsel to move for the striking out of the testimony of the said witness. As I have said, the issues are simple. The witness has already testified and the witness is still very much willing to continue his testimony. Your Honor, to continue testifying on those three (3) affidavits with all those annexes, rather than strike the testimonies of the witness from the records of this case which would amount your Honor to issue of technicality not favor by jurisprudential authorities, I would like to challenge the defense counsel to allow us, your Honor, to have those testimonies stay on the record and . . . on the contents of those three (3) affidavits as well as those annexes at least as to the existence your Honor and allow the prosecution to wind up your Honor their evidence by filing the complete formal offer of exhibits. In that way, your Honor, any technicality will be avoided.

Atty. Sison:

Your Honor, I said that if only to give teeth to the order of the Honorable Court last April 11, in any event, your Honor, this representation has maintained as early as five months ago that he is willing to stipulate your Honor on the existence of the affidavits of Atty. Chavez as well as the existence of the newspaper clippings but not as to the truth and veracity thereof, your Honor.

Atty. Galit:

Including annexes of those three (3) affidavits, I would like to call the attention of this Honorable Court that Prosecutor Sulit is around and now if the position of the defense counsel would be to stipulate on the existence of these documents, then we will be willing enough to wind up our presentation of evidence and submit the formal offer of evidence . . .

Atty. Galit:

The pending Motion to strike out seems to have been super[s]eded, your Honor, by the defense counsel himself when he entered into stipulation regarding the existence of these documents, your Honor, whom those annexes in the affidavit of Frank Chavez and as a matter of fact without waiving the stipulations made by the defense counsel, the Sandigan Prosecutor Wendell Barreras Sulit is showing your Honor to the defense counsel the original of those documents.

Court:

Is that correct Atty. Sison that the testimony of former Solicitor General Frank Chavez remains in the records considering the existence of three (3) affidavits as well as the newspaper clipping and the annexes?

Atty. Sison:

Yes, your Honor. Only as to the existence of these documents, it is subject to our cross examination.

Atty. Galit:

So the affidavit dated October 6, 1999.

Court:

So the testimony of former Solicitor General Frank Chavez is now deemed terminated, correct me if I'm wrong.

Atty. Galit:

Yes, your Honor.

....

Court:

But you will cross examine the witness Frank Chavez after the cross examination, you will file your formal offer after the cross examination.

Atty. Sison:

Your Honor, I will not cross examine anymore.

Court:

Okay[.] Order. Considering the manifestation of both counsels, the testimony of the former Solicitor General Frank Chavez is now deemed terminated and that the defense counsel manifested that he is no longer cross examining the witness. So ordered.[107]

As is apparent from the records, petitioner's testimony was not terminated abruptly by Judge Pampilo. Rather, the termination of his testimony was expressly agreed to by the prosecution, having obtained a stipulation from the defense counsel on the existence of the documents which petitioner was to identify.

Petitioner's claim that respondent Imelda would not have been acquitted had petitioner been allowed to continue his testimony is not only wildly speculative, but it is also devoid of basis. What he would have identified was a Certification of Swiss banking documents, addressed to petitioner in his capacity as Solicitor General of the Philippines, stating, in part:

There is no disposition in any of the criminal proceedings applicable in Switzerland providing for the certification of banking documents. If a witness or a bank submits Xerox copies to a criminal authority, these documents become automatically and without any certification conclusive evidence.

In legal assistance proceedings, the acts of investigation are performed according to the applicable law of the requested State, in casu of Switzerland. In international legal assistance proceedings, the requesting State usually recognizes the evidence collected according to the dispositions of the law of the requested State.

Art. 92 of the Federal Law on international legal assistance in criminal matters of March 20, 1981 (EIMP) indicates that all the acts of investigation performed by the authorities of a foreign State according to its law have the same value in the proceeding as the corresponding Swiss acts of investigation.

We know that especially in Anglo-Saxon law countries there are very strict rules concerning the formal constitution of conclusive evidence. Art. 65 litt. b EIMP therefore provides that in order to permit the formal admission of other evidence (especially of documents) the express desiderata of the requesting authority must be considered. In the Treaty between the Confederation of Switzerland and the United States of American mutual legal assistance in criminal matters of May 25, 1973 the certification of documents is specifically provided for. Practically, this certification is in the form of two certificates. Through the "Certificate of Authenticity of Business Records", the holder of the documents certifies their authenticity; the competent examining magistrate issues the "Certificate of the Swiss Authority executing Request for Documents" to attest that he checked himself the documents and is convinced that they are "genuine, authenticated and certified true copies". The American Courts admit without further formalities Swiss banking documents so certified.

Concerning the documents of Swiss Credit Bank collected in Zurich, I gave you during your visit of August 13, 1991 two such certificates for each document which authenticated the banking documents. To my knowledge, the examining magistrate of Geneva, Vladimir Sternberger, also prepared similar certificates. In my opinion, these Swiss certificates of the genuine character of the documents are sufficient to present the

evidence obtained in Switzerland in the Philippine Courts. A further certification of each of the several thousand documents is therefore neither necessary nor proportionate.[108]

Petitioner claims that his testimony would controvert Judge Pampilo's conclusion that the bank documents are private documents, and that they were, thus, inadmissible as hearsay.[109] However, he failed to lay the legal basis to justify the conclusion that his testimony would have established that the bank records are public documents. In *People v. Patamama*: [110]

Also of little evidentiary value is the PAGASA certification presented by the defense respecting the rising and setting of the moon on the night in question; and this, because it is clearly hearsay, having been prepared and signed by a certain Carmelito Calimbas, allegedly the Officer in Charge of the Astronomy Research and Development Section of PAGASA. Calimbas was not presented in court for identification and to show that he was technically qualified to make and issue such certification. The rules of evidence properly exclude the testimony of witnesses demonstrably incompetent, as well as evidence that can not be tested by cross-examination.[111] (Citations omitted)

In this case, petitioner would have identified a certification which was not issued by him, but by a certain Peter Cosandey, who, as properly noted by the Regional Trial Court, was not presented in court. Thus, considering that petitioner was not the one who prepared the certificate, his testimony would have been of little evidentiary value. The claim that his testimony would have saved the prosecution's case is baseless.

Finally, petitioner's speculations regarding the strategy employed by respondent Imelda's counsel are wild and baseless. Respondent Imelda's counsel may have filed an Urgent Motion to Lift Temporary Restraining Order Ad Cautelam very quickly, but timeliness alone cannot and should not be viewed with suspicion. Counsel for respondent did not need a direct liaison to manage this, and filing pleadings in a timely manner should not be so out of the ordinary that it suggests misdeeds.

There is one allegation which, if true, might suggest some bias on the part of Judge Pampilo. In particular, petitioner alleges that Judge Pampilo told news reporters that the promulgation would proceed despite the subsisting Court of Appeals Temporary Restraining Order because respondent Imelda was working on lifting said injunction:

25. Petitioner also submits that he made manifestations before the Court of Appeals during the 25 July 2007 hearing, which manifestations were not denied by counsel for Imelda Marcos. On 23 May 2007, Judge Pampilo went to court ready to promulgate his decision despite the fact that he was already served with the trial court's TRO in the afternoon of 22 May 2007. When Judge Pampilo was approached by news reporters if the promulgation would push through, Judge Pampilo answered in the affirmative since Imelda Marcos is supposedly working out a way to have the TRO lifted, obviously referring to Imelda Marcos' Motion to Lift TRO dated 23 May 2007. When no order from the Court of Appeals came, Judge Pampilo asked the reporters to come back by 2:00 p.m. of that same / day, since according to him, by that time, Imelda Marcos might be able to secure the lifting of the TRO. Having failed in his expectations, Judge Pampilo rescheduled the promulgation of judgment to 30 May 2007 as may be gleaned from page 43 of his Decision. He just would not give up in his attempts to grant Imelda Marcos an early acquittal despite orders from the Court of Appeals. How can such a conduct be explained?[112] (Emphasis in the original)

If it is true that Judge Pampilo told news reporters that he was expecting the Court of Appeals Temporary Restraining Order to be lifted within the day, this could suggest that Judge Pampilo was coordinating with respondent Imelda's lawyers. However, no evidence was presented to support this allegation. Allegation does not substitute proof, so this claim must be rejected.

This petition arose from what appears to have been such an important case for the government, which involves

accountability for millions of pesos spirited away by respondent, filed in the lower court. Yet, it appears that the government's resolve to prosecute has been lackadaisical, to say the least. The prosecution and their witness appear to have requested several postponements on grounds which, to this Court, do not outweigh the grave public interest suggested by the various Informations filed against respondent.

The lower court's liberality in granting the various continuances does not seem to have been met by the presentation of evidence with a depth and quality that would have shown the diligence and seriousness of the prosecution.

Prosecutors for the government should always remember that their work does not end with public announcements relating to the filing of informations against those who have committed nefarious raids on our public coffers. Their work is to professionally present the evidence marshalled through painstaking and fastidious investigation. Prosecutors should avoid the soundbite that will land them the headlines in all forms of media. Instead, they should do their work and attain justice and reparations for our people wronged by selfish conniving politicians who do not deserve their public offices.

Apathetic prosecution allows impunity. It is difficult as enough as it is to discover wrongdoing, protect key witnesses, preserve the evidence, and guard against the machinations of powerful and moneyed individuals. Prosecutors must not only be courageous but must also show their dedication to public interest through their competence. Otherwise, the system will invite suspicion that there had been unholy collusion.

Fatal errors that should have been avoided by veteran litigators, such as a habit of postponements and a lack of preparation, cannot be papered over by a labyrinth of appeals that reaches this Court. That is a fool's strategy that will only contribute to increasing the dockets of this Court, thereby denying time and resources from deserving petitioners.

The prosecution could have done better in this case. Sadly, it failed.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The Court of Appeals February 28, 2008 Decision and November 24, 2008 Resolution in CA-GR. SP No. 98799 are hereby AFFIRMED.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Martires, and Jardeleza, JJ., concur.

[1] See *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, 509 Phil. 339 (2005) [Per J. Panganiban, Third Division].

[2] *Rollo*, pp. 12-73.

[3] *Id.* at 180-195. The Decision was penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal of the Eighth Division, Court of Appeals, Manila.

[4] *Id.* at 291-293. The Resolution was penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal of the Former Eighth Division of the Court of Appeals, Manila.

[5] *Id.* at 74-94.

[6] *Id.* at 95-112.

[7] Id. at 235-236.

[8] Central Bank Circ. No. 960, sec. 4 reads:

Section 4. Foreign exchange retention abroad. - No person shall promote, finance, enter into or participate in any foreign exchange transactions where the foreign exchange involved is paid, retained, delivered or transferred abroad while the corresponding pesos are paid for or are received in the Philippines, except when specifically authorized by the Central bank or otherwise allowed under Central Bank regulations.

[9] Rep. Act No. 265, sec. 34 provides:

Section 34. Proceedings upon violation of laws and regulations. - Whenever any person or entity wilfully violates this Act or any order, instruction, rule or regulation legally issued by the Monetary Board, the person or persons responsible for such violation shall be punished by a fine of not more than twenty thousand pesos and by imprisonment of not more than five years.

[10] Rollo, p. 236-237.

[11] Id. at 237-238.

[12] Id. at 238.

[13] Id. at 239-240.

[14] Id. at 240-241.

[15] Id. at 241.

[16] Id. at 241-248.

[17] Id. at 250.

[18] Id. at 251.

[19] Id. at 118.

[20] Id. at 119.

[21] Id. at 98.

[22] Id. at 98-99.

[23] Id. at 99.

[24] Id. at 99-100.

[25] Id. at 120.

[26] Id. at 121.

[27] Id. at 123.

[28] Id. at 434.

[29] Id. at 95-112.

[30] Id. at 110-111.

[31] Id. at 124-125.

- [32] Id.
- [33] Id. at 126.
- [34] Id. at 127-133.
- [35] Id. at 133-145.
- [36] Id. at 145-149.
- [37] Id. at 150-154.
- [38] Id. at 155-160.
- [39] Id. at 161-170.
- [40] Id. at 170-176.
- [41] Id. at 74-94.
- [42] Id. at 92.
- [43] Id. at 181.
- [44] Id. at 180-195.
- [45] Id. at 191-193.
- [46] Id. at 194.
- [47] See rollo, p. 197, footnote 3.
- [48] Id. at 253.
- [49] Id. at 250.
- [50] Id. at 254.
- [51] Id. at 260-262.
- [52] Id. at 263.
- [53] Id. at 263-266.
- [54] Id. at 267-270.
- [55] Id. at 273-275.
- [56] Id. at 276.
- [57] Id. at 196-234.
- [58] Id. at 197.
- [59] Id. at 197-198.
- [60] Id. at 198.
- [61] Id. at 292.
- [62] Id. at 352-373.

- [63] Id. at 379-399.
- [64] Id. at 400.
- [65] Id. at 413-475.
- [66] Id. at 500.
- [67] Id. at 504-538.
- [68] Id. at 554.
- [69] Id. at 564.
- [70] Id. at 555-563.
- [71] Id. at 558-559.
- [72] Id. at 426.
- [73] Id. at 427-428.
- [74] Id. at 428.
- [75] Id. at 430.
- [76] Id. at 433.
- [77] Id. at 437.
- [78] Id. at 438, footnote 30.
- [79] Id. at 438-439.
- [80] Id. at 441.
- [81] Id. at 443.
- [82] Id. at 441.
- [83] Id. at 442.
- [84] Id. at 445-446.
- [85] Id. at 447-449.
- [86] Id. at 451-452.
- [87] Id. at 458-460.
- [88] Id. at 462.
- [89] Id. at 462-463.
- [90] Id. at 517.
- [91] RULES OF COURT, Rule 45, sec. 1.
- [92] Rollo, pp. 424-425.
- [93] *Pascal v. Burgos*, G.R. No. 171722, January 11, 2016 [Per J. Leonen, Second Division].

[94] Rollo, p. 292.

[95] Id. at 197-198.

[96] Id. at 292.

[97] Pagoda Philippines, Inc. v. Universal Canning, Inc., 509 Phil. 339 (2005) [Per J. Panganiban, Third Division].

[98] 128 Phil. 176 (1967) [Per J. Sanchez, En Banc].

[99] Id. at 181-184.

[100] See Gochan v. Gochan, 446 Phil. 433 (2003) [Per J. Panganiban, Third Division].

[101] Rollo, pp. 427-428.

[102] See Gochan v. Gochan, 446 Phil. 433 (2003) [Per J. Panganiban, Third Division].

[103] Kilosbayan Foundation v. Janolo, Jr., 640 Phil. 33 (2010) [Per J. Carpio-Morales, En Banc].

[104] Rollo, pp. 150-154.

[105] Id. at 442.

[106] Id. at 150-154.

[107] Id. at 155-160.

[108] Id. at 278-279.

[109] Id. at 464-465.

[110] 321 Phil. 193 (1995) [Per C.J. Narvasa, Second Division].

[111] Id. at 204.

[112] Rollo, pp. 451-452.

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